

WHITESTOWN PLAN COMMISSION

RULES AND PROCEDURES

ARTICLE 1: JURISDICTION AND AUTHORITY

Section 1. Plan Commission Authority. The authority to review, approve, and grant the petitions listed in the Whitestown Unified Development Ordinance (UDO) shall rest with the Whitestown Plan Commission (WPC). Where permitted by law, the WPC may, at its discretion, delegate such authority to the Administrator.

Section 2. Territorial Jurisdiction. The WPC shall have jurisdiction over all land within the established municipal boundary of the Town of Whitestown as defined by description or map in the Boone County Recorder's Office.

Section 3. Administrator. The Town's Director of Planning, or a designee thereof (the Administrator), shall have the principal responsibility for the administration and enforcement of the UDO. The Administrator's duties shall include, but not be limited to:

a) Receiving, approving, or disapproving all Improvement Location Permits (ILPs) and keeping permanent records of applications made and actions taken. An ILP is a permit for the erection, alteration, or repair of any structure.

b) Conducting inspections of structures and properties to determine compliance with the requirements of the UDO and all approvals granted by the WPC, Town Council, committees, or other body in the execution of its duties as established by the UDO and Indiana Code.

c) Maintaining permanent and current records documenting the application of the UDO, including not but limited to all maps, plats, amendments, and petitions.

d) Receiving, processing, docketing, and referring to the WPC all appropriate applications.

e) Providing all such clerical and technical assistance as may be required by the WPC, Technical Advisory Committee (TAC), any of its other committees, the Town Council, or other body in the execution of its duties as established by the UDO and Indiana Code.

f) Receiving, processing, docketing, and referring all appropriate applications to the TAC and any of its other committees.

Section 4. Robert's Rules of Order. Robert's Rules of Order are hereby incorporated by reference and made a part of these rules and shall control on issues and procedures not expressly provided for herein.

ARTICLE 2: MEMBERSHIP

Section 1. Composition. The WPC shall consist of seven (7) members as prescribed by IC 36-7-4-207(b) and Chapter 2.35 of the Whitestown Municipal Code (Whitestown Ordinance No. 2010-11). They shall serve the terms as described in Section 2.35.040 of the Whitestown Municipal Code.

Section 2. Qualifications for Citizen Members. The qualifications for citizen members shall be as prescribed by IC 36-7-4-216.

Section 3. Certification. The Clerk-Treasurer shall certify members appointed by the Town Council, and the Town Council President shall certify the President's appointments. The certificates shall be sent to and made a part of the records of the WPC, as prescribed by IC 36-7-4-212.

Section 4. Removal of Members. Members may be removed from the WPC by the respective appointing authority prior to the end of their term for failure to appear at three (3) consecutive, regularly scheduled WPC meetings.

ARTICLE 3: DUTIES AND POWERS

Section 1. Duties. The following duties should be interpreted as activities that are obligations of the WPC, as prescribed by IC 36-7-4-401, 36-7-4-402, and 36-7-4-405:

- a) Prescribe the qualifications of, appoint, remove, and fix the compensation of the WPC staff, consistent with the compensation fixed by the Town Council;
- b) Supervise and make rules for the administration of the affairs of the WPC;
- c) Prescribe uniform rules pertaining to investigations and hearings;
- d) Keep a complete record of all proceedings;
- e) Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the WPC;
- f) Prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized by the Indiana Code;
- g) Adopt a seal;
- h) Certify all official acts;
- i) Supervise the fiscal affairs of the WPC;

j) Prepare and submit an annual budget in the same manner as other departments of municipal government, and be limited in all expenditures to the provisions made for the expenditures by the Town Council;

k) Make recommendations to the Town Council or other bodies concerning: i) the adoption of the comprehensive plan and amendments to the comprehensive plan; ii) the adoption or text amendment of the UDO; iii) the adoption or amendment of a PUD district ordinance; and iv) zone map changes.

l) Render decisions concerning plats, replats, and amendments to plats of subdivisions;

m) Assign addresses;

n) Render decisions concerning concept plans, development plans and amendments to concept plans or development plans, unless otherwise delegated; and

o) Perform all additional duties of a plan commission as established by the Indiana Code.

Section 2. Powers. The following powers should be interpreted as activities that are optional and may be initiated by the WPC within its jurisdiction pursuant to the Indiana Code:

a) Establish committees as necessary, composed of specific members, and organized for specific purpose;

b) Establish an executive committee;

c) See funding assistance through grant programs and donations as necessary;

d) Establish a schedule of fees to be approved by the Town Council to defray the administrative costs of the official action of the WPC;

e) Appoint and fix the duties of the Secretary;

f) Contract for special or temporary services and professional counsel;

g) Perform all additional powers as permitted by the Indiana Code.

Section 3. Commitments. Pursuant to IC 36-7-4-1015(a), as a condition to the a) adoption of a rezoning proposal, b) primary approval of a proposed subdivision plat, concept plan, or development plan, or c) approval of a vacation or all or part of a plat, the WPC may require or allow the owner of a parcel of real property to make a commitment to the WPC concerning the use or development of that parcel. Pursuant to IC 36-7-4-1015(c), the WPC hereby declares that the criteria to be considered when an owner applies for the modification or termination of a commitment made under these

rules are the same criteria that applied to the proposal when the WPC originally recommended adoption or granted approval, as the case may be.

ARTICLE 4: ACTIONS AND DECISIONS

Section 1. Quorum. A quorum is a majority of the full membership of the WPC.

Section 2. Official Action. Action of the WPC is official when concurred in by a majority of the full membership.

Section 3. Tie Votes. When a vote of the WPC results in a tie, the matter may be resolved by:

- a) A new motion to reconsider the matter and followed by a re-vote; or
- b) Re-docketing the matter for the next regularly scheduled meeting of the WPC.

Section 4. Indecisive Vote. In any case where a vote of the WPC does not result in official action, the petition shall be automatically re-docketed for the next regularly scheduled meeting of the WPC.

Section 5. Continuances.

a) A continuance may be requested for sufficient cause by the petitioner, by an interested party, or a member of the WPC. It shall be within the discretion of the WPC to grant or deny any request for continuance. Re-notification shall not be required if a petition is continued at a properly noticed public hearing/meeting to a specified future hearing/meeting date of the WPC.

b) A request for continuance by the petitioner may be filed in writing prior to the WPC's hearing/meeting or made orally at the beginning of the WPC meeting when the agenda is considered. However, the petitioner shall be prepared to move forward with their petition until the continuance request is granted by the WPC.

c) A request for continuance by an interested party may be filed in writing prior to the WPC's hearing/meeting or made orally at the beginning of the WPC meeting when the agenda is considered. The interested party shall be prepared for the petition to move forward until the continuance request is granted by the WPC. For purposes of a public hearing, an "interested party" is any individual whose right to use, acquire, or enjoy property is or may be affected by action taken by the WPC.

d) A member of the WPC may make a motion of continuance for consideration by the WPC.

Section 6. Withdrawal of Petitions. No petition may be withdrawn by the petitioner after a vote has been ordered by the President or chairperson presiding at the meeting. A petition which has been withdrawn by the petitioner shall not again be placed on the

docket for consideration by the WPC within a period of ninety (90) days from the date of withdrawal, except upon a motion by a WPC member to permit re-docketing which is approved by the unanimous vote of the quorum present.

Section 7. Dismissal. The WPC may dismiss a case for want of prosecution or for lack of jurisdiction.

ARTICLE 5: MEETING SCHEDULE

Section 1. Application Schedule. The Administrator shall develop and maintain an annual Application Schedule, which comprises a Calendar of Meetings and Filing Dates for the WPC, TAC, and any of its other committees. The existence of this calendar shall not be interpreted as prohibiting special meetings of the WPC or its committees.

Section 2. Coordination of Calendars. The calendar of the WPC, TAC, and its other committees shall be coordinated to ensure the efficient processing of applications.

Section 3. Compliance with Laws. All meeting and filing dates shall be based on the requirements of the UDO and the Indiana Code.

Section 4. Approval of Calendar. The Calendar of Meetings and Filing Dates shall be prepared by the Administrator and approved by the WPC.

Section 5. Maintenance. The Calendar of Meeting and Filing Dates shall be reviewed and updated annually by the Administrator and posted in the Whitestown Municipal Complex and/or on the Town's website.

ARTICLE 6: HEARING PROCEDURES

Section 1. Order of Business. The WPC shall follow the following order of business:

- a) Call to Order.
- b) Pledge of Allegiance.
- c) Roll Call.
- d) Approval of the Agenda (and consideration of requested continuances).
- e) Minutes.
- f) Public Comment for items not on the agenda.
- g) Presentations.
- h) Old Business: i) Public hearings on petitions, ii) Other petitions for consideration, and iii) Other business.

i) New Business: i) Public hearings on petitions, ii) Other petitions for consideration, and iii) Other business.

j) New Business from the Floor.

k) Announcements.

l) Adjournment.

Section 2. Procedure for Public Comment for Items Not on the Agenda. The WPC shall allot a total of ten (10) minutes for public comment for items not on the agenda. Each individual wishing to speak shall be allowed a maximum of two (2) minutes.

Section 3. Procedure for Petition Consideration. Each petition before the WPC shall generally be allotted not more than forty-five (45) minutes for the presentation of evidence, comments, and questions at the public hearing. The President (or presiding member) shall have the authority to extend the time periods specified below where appropriate, unless otherwise directed by a majority of the quorum present:

a) *Introduction*. The President shall introduce the petition and open it for discussion.

b) *Presentation*. The petitioner shall have a total of fifteen (15) minutes (not including the time allotted for their closing remarks) for the presentation of their petition.

c) *Staff and Public Officials' Report*. The Administrator shall present the staff and public officials' report (not to exceed five (5) minutes) for the petition.

d) *Public Discussion*. Members of the public shall have a total of twenty (20) minutes to present evidence, comments, and questions relevant to the matter being considered. In any case where there are multiple members of the public who wish to speak, the President shall have the discretion to limit the amount of time that each individual is allotted.

e) *Closing Remarks by Petitioner*. The petitioner shall have a total of five (5) minutes for closing remarks as well as responding to the presentation of evidence, comments, and questions raised during the public discussion.

f) *Discussion of WPC*. The President shall then close the public hearing and call for questions and comments from members of the WPC. WPC members shall be entitled to question the petitioner, the staff, legal counsel, and/or members of the public who have presented evidence, comments, and questions relevant to the matter being considered.

g) *Call for Vote*. The President shall call for a motion and a second on the case being heard. Upon a motion being made and seconded, the President shall then call for discussion on the motion.

h) *Voting*. After discussion on the motion, the President shall then call for a vote. All decisions shall be by voice vote. However, if the President deems it necessary, the Administrator shall do a roll call for a vote on the motion.

Section 4. *Meeting Limitations*. No petition shall be introduced for consideration after 10:00 pm. Agenda items remaining on the agenda shall be automatically placed at the beginning of the agenda at the next regularly scheduled meeting of the WPC.

ARTICLE 7: CONDUCT OF MEETINGS

Section 1. *Orderly Conduct*. Every person appearing before the WPC shall abide by the order and direction of the President. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges and shall be dealt with as the President deems fair and proper.

Section 2. *Appearance at Meetings*. Any party may appear in person or by representative (person, agent, attorney, etc.) at WPC meetings. A representative may testify to the facts that he or she has particular knowledge of that relate to the issues of the petition. In so testifying, the representative shall be subject to cross-examination and questions.

Section 3. *Basis for Decisions*. Actions of the WPC shall be based upon:

- a) Information submitted to the Administrator and made part of the permanent record;
- b) The information submitted at the meeting and made part of the permanent record;
- c) The testimony received at the meeting and made part of the permanent record; and
- d) The applicable ordinances that are in effect and relevant to the petition (i.e., the UDO).

Section 4. *Site Visit*. Members shall have the right to inspect land involved in any petition to be heard by the WPC, either individually or jointly. However, no more than three (3) members shall inspect the subject land at the same time.

Section 5. *Conflicts of Interest*. During presentation and discussion of the subject petition, a member who has a conflict of interest shall not sit as a member of the WPC nor vote on the particular petition; however, they may participate in the discussion as a

member of the public. A member of the WPC shall have a conflict of interest with regard to a petition if: a) they, or a family member, have financial interest in a subject property or petition, or b) they own (individually or jointly) property close enough to a subject petition to receive written notice.

Section 6. Record of Hearing. The Administrator shall manage files and maintain a record of all petitions, hearings, and meetings of the WPC. Copies of such record of any hearing may be ordered by any party, and cost thereof shall be paid by the party ordering such copy or copies in accordance with the adopted fees. In all cases heard by the WPC, the vote shall be recorded in the minutes of the meeting.

Section 7. Attendance. WPC members are expected to attend all meetings of the WPC. To ensure a quorum, members shall notify the Administrator at their earliest convenience if they are not able to attend a scheduled meeting either entirely or in part. Members who fail to appear at meetings may be subject to removal from the WPC (see *Article 2, Section 4: Removal of Members*).

ARTICLE 8: FILING OF PETITIONS

Section 1. Policies:

a) *Prior Code Violations*. A petition or permit application may not be filed for a property that has a previously documented and unresolved code violation until the violation has been resolved. However, the Administrator may allow the filing of a petition application or permit application if it is shown that it will directly contribute to the resolution of the violation.

b) *Adverse Decisions*. A petition that receives an adverse decision from the WPC or Town Council may not be refiled for a period of one (1) year from the date of the adverse decision. The Administrator shall determine if a new petition significantly differs from the previous petition that received the adverse decision.

Section 2. Filing Required Prior to Hearing. All applications for consideration or recommendation shall be filed in accordance with the proper forms adopted by the WPC, in the required numbers, and in the required form, and in accordance with the adopted Calendar of Meeting and Filing Dates. If the Administrator finds that the application or submittal is insufficient, not in accordance with the proper forms, or not in compliance with the UDO, said petition shall be considered “incomplete” and shall not be accepted until such time as it becomes complete.

Section 3. Attendance at Hearing Required. All applicants, petitioners, or designated representatives shall attend the public hearing in person to present the application or petition, to answer questions from the WPC, and to make rebuttal or answer questions

to remonstrators. Failure to meet this requirement may result in the dismissal of the petition.

Section 4. Filing on WPC Forms. Any communication purporting to be an application not on forms furnished by the WPC, or not containing the information called for on said forms, shall be regarded as a mere notice of intention to file and shall be of no force or effect until it is made on and in the form required. All application forms, including the instructions therewith, are hereby declared to be a part of these rules.

Section 5. Filing Fee. The petitioner shall pay the appropriate filing fee at the time of filing their petition to cover expenses of processing the petition. The amount of fees shall be in accordance with the fee schedule as adopted by the Town Council.

ARTICLE 9: PUBLIC NOTICE

Section 1. Notice Requirements. Notice of petitions or cases to be heard by the WPC shall be given to all interested parties or property owners in the manner described in this Article, or as otherwise directed by the WPC.

Section 2. Notification by Newspaper. The petitioner shall publish notice at least ten (10) days prior to the scheduled hearing in the Lebanon Reporter and/or the Zionsville Times Sentinel. The Administrator shall advise the petitioner whether publication is necessary in either or both newspapers. Proof of publication affidavit from the publisher shall be placed in the file at least three (3) days prior to the hearing. The cost of publication shall be borne by the applicant.

Section 3. Notification by Mail. The petitioner shall provide written notice by mail to all interested parties at least ten (10) days prior to the scheduled hearing on the WPC's prescribed form, by Certificate of Mailing or certified mail. Notice shall be postmarked at least ten (10) days prior to the hearing. Receipts and/or the Certificate of Mailing shall be submitted at least three (3) days prior to the hearing. However, no notice by mail is required for a petition initiated by the WPC or the Town Council to repeal, amend, or replace all or part of the comprehensive plan or the UDO.

Section 4. Interested Parties. For the purpose of written notice by mail, "interested parties" shall be defined as property owners whose parcels are within two (2) parcels deep, in any direction, from the property that is the subject of the petition, except that a property owner whose entire parcel is more than six hundred (600) feet from the subject property shall not be considered an interested party. Additionally, written notice shall be sent to owners of the properties that are the subject of the petition, unless the owners are the petitioner or have granted written consent for the petitioner in the WPC's prescribed form.

Section 5. Notification by Sign. If the petition or case to be heard by the WPC involves the rezoning of any property or the review of a concept plan or development plan, the petitioner shall also provide notice to the general public by placing a sign approved by the Administrator on each property that is the subject of the petition. The sign shall be placed no less than fourteen (14) days prior to the hearing and removed no more than three (3) days after.

ARTICLE 10: AGENDAS

Section 1. Docketing of Cases. Each case shall be filed in proper form, with the required date, numbered serially, and placed on the docket by the Administrator. The Administrator shall be responsible for the preparation and distribution of an agenda for each meeting of the WPC. Agendas shall be distributed prior to each meeting to the WPC members, legal counsel, and the media. Other interested or affected parties may request agendas.

Section 2. Order of Hearing Cases. On the date set for hearing, cases shall come before the WPC either in the regular order of their consecutive numbers, or grouped by similar petitions, as determined by the Administrator in setting the meeting agenda. However, cases re-docketed or continued from a previous meeting shall be heard as Old Business, before the cases docketed as New Business.

Section 3. Agenda Limitations. In preparing the docket for each public hearing of the WPC, the cases scheduled shall be limited to a reasonable number as determined by the Administrator.

ARTICLE 11: OFFICERS AND COMMITTEES

Section 1. President. A President shall be elected at the first regular meeting of the WPC in each calendar year. The President shall preside at all WPC meetings. Meetings shall be held at the call of the President or at other times which the WPC deems necessary.

Section 2. Vice President. A Vice President shall be elected in the manner prescribed for the President and shall have the authority to act as President during the absence or disability of the duly elected President.

Section 3. Secretary. The Administrator shall designate a person to serve as the Secretary of the WPC. The Secretary shall maintain responsibility, with the Administrator, for all records and correspondence for the WPC. They shall cause minutes of the WPC meeting to be maintained in permanent volume, notice to be served of all public hearings and notification to be served to all members of all meetings. The Secretary, subject to the direction of the President and the supervision of the Administrator, shall record all important facts pertaining to each meeting and hearing, all petitions and resolutions acted upon by the WPC, and all votes of members

of the WPC upon the final determination of any questions, indicating the names of any members absent or otherwise unable to vote.

Section 4. President Pro Tempore. In the absence of both the President and Vice President, a temporary presiding officer shall be selected from the members present at the meeting.

Section 5. Court Reporter. A court reporter may be used for keeping and transcribing minutes of regular or special meetings of the WPC.

Section 6. Points of Order. The President shall decide all points of order of procedure in accordance with these rules, unless otherwise directed by a majority of the quorum present.

Section 7. Executive Committee. Pursuant to IC 36-7-4-408, the WPC hereby establishes an executive committee having three (3) members. Subject to the necessity of a two-thirds (2/3) majority vote of the entire membership of the WPC to confirm their membership, the President, the Vice President, and at-large member elected by the WPC shall comprise the executive committee. The President shall chair the executive committee, which shall meet from time to time on the call of the President. A majority of the executive committee may act in the name of the WPC; but if there are any dissenting votes, a person voting in the minority may appeal the decision of the executive committee to the WPC.

Section 8. Study Committees. Pursuant to IC 36-7-4-402, the WPC may establish study committees, composed of members of the WPC and/or members of the Town Council, to review proposals as specified by the WPC which may require further study before the entire membership of the WPC takes final action. The President of the WPC shall appoint the chairperson and members of any study committee. A study committee shall review each proposal referred to it in detail and then report back to the WPC its recommendations, if any, regarding the proposal. However, if a study committee fails to forward a recommendation on a proposal to the WPC within four (4) months, the WPC may, upon motion of any WPC member, remove the matter from the study committee and take final action on the proposal without receiving any recommendation from the committee, all in accordance with the Indiana Code, the UDO, and these rules.

ARTICLE 12: OPEN DOOR LAW REQUIREMENTS

Section 1. Compliance with Law. The WPC shall comply with IC 5-14-1.5, the Open Door Law, with respect to the use of agendas and requirements for “meetings”.

Section 2. Definitions. For purposes of this Article, words and phrases that appear in quotation marks have the meanings set forth in IC 5-14-1.5-2. Except as permitted in IC 5-14-1.5-6.1 (relating to “executive sessions”), all “meetings” of the WPC must be open to the public as required by the Open Door Law.

Section 3. *Serial Meeting Prohibition*. Pursuant to IC 5-14-1.5-3.1, WPC members are prohibited from participating in any series of gatherings which meets all of the following criteria:

- a) When one of the gatherings is attended by three (3) WPC members and the other gatherings include two (2) or three (3) WPC members;
- b) When the sum of the number of different WPC members attending any of the gatherings equals four (4) or more;
- c) When all the gatherings concern the same subject matter and are held within a period of seven (7) consecutive days; and
- d) When the gatherings are held to take “official action” on “public business”.

Section 4. *Attendance at Gatherings*. For purposes of this Article, a WPC member attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone, computer, videoconferencing, or any other electronic means of communication, excluding electronic mail. However, a gathering under this Article does not include:

- a) a social or chance gathering not intended by any member to avoid the requirements of the Open Door Law;
- b) an onsite inspection of any project or program, or any facilities of applicants for incentives or assistance from the WPC;
- c) traveling to and attending meetings of organizations devoted to the betterment of government;
- d) a “caucus”;
- e) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or “final action” on the terms of a request or an offer of public financial resources;
- f) an orientation of WPC members on their role and responsibilities as public officials, but not for any other “official action”;
- g) a gathering for the sole purpose of administering an oath of office to an individual; or
- h) a gathering that includes only two (2) or three (3) WPC members which is intended solely for those members to receive information and deliberate on whether a member or members may be inclined to support another member's proposal or any other matter that may be heard or considered by the WPC and at which no other “official action” will occur.

Section 5. *Electronic Communications*. A WPC member who is not physically present at a “meeting” of the WPC may communicate with other WPC members during the “meeting” by telephone, computer, videoconferencing, or any other electronic means of communication, including electronic mail. However, such a member may not participate in “final action” taken at the “meeting”, and may not be considered to be present at the “meeting” for quorum purposes.

Section 6. Minutes Regarding Electronic Communications. The minutes of any “meeting” in which a WPC member participates by using a means of communication described in Section 5 of this Article must state the name of each member who was physically present at the place where the “meeting” was conducted, each member who participated in the “meeting” by using a means of communication described in Section 5, and each member who was absent.

Section 7. Communications Outside of Meetings. A WPC member may communicate with other WPC members (other than during a “meeting” of the WPC) by telephone, computer, videoconferencing, or any other electronic means of communication, including electronic mail, so long as such communications include only two (2) or three (3) WPC members and are intended solely for the WPC members to receive information and deliberate on whether a member or members may be inclined to support another member's proposal or any other matter that may be heard or considered by the WPC and involve no other “official action”.

Section 8. Communications Outside of Committee Meetings. A WPC member may communicate with members of a committee (other than during a “meeting” of the committee) by telephone, computer, videoconferencing, or any other electronic means of communication, including electronic mail, so long as such communications include less than a quorum of the committee members and are intended solely for the committee members to receive information and deliberate on whether a member or members may be inclined to support another member's proposal or any other matter that may be heard or considered by the committee and involve no other “official action”.

ARTICLE 13: AMENDING OR SUSPENDING THE RULES

Section 1. Amendments. Amendments to these rules may be made by the WPC only upon the affirmative vote of a majority of the full membership of the WPC.

Section 2. Presentation of Amendments. Any amendment to these rules must be presented at least fourteen (14) days prior to voting on the amendment.

Section 3. Suspension of Rules. The suspension of any rule may be ordered at any meeting of the WPC by a two-thirds (2/3) vote of the quorum present.